IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13963 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOOMI K. MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13963 of 2003

MR MAULIN R RAVAL for Petitioner No. 1

MR DIPEN A DESAI, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 20/12/2003

ORAL JUDGEMENT

Rule. Mr Dipen A Desai, learned AGP waives service of Rule for respondent Nos. 1 and 2.

In the facts and circumstances, the petition is taken up for final disposal today.

2. The petitioner was granted admission to the first year Homeopathy Course in Swami Vivekanand Homeopathic College at Bhavnagar (respondent No. 3 herein) on a seat in the management quota on 8.7.2003. The petitioner also paid the fees of Rs.12,500/- to respondent No.3-college

which is a self-financed unaided Homeopathic College. When the college started imparting instructions from September, 2003, the petitioner also started attending the classes.

3. Unfortunately, it appears that on account of the controversy about the rights of the management running self-financed unaided professional colleges, another learned Single Judge of this Court stayed the operation of the Government Resolution regarding the seats to be filled in in the management quota and the order of the learned Single Judge required admissions to all seats including the seats in the self-financed unaided professional colleges to be given through the Centralized Admission Committee. The Centralized Admission Committee gave general instructions to all the self-financed unaided professional colleges in the State to cancel all admissions given otherwise through the Centralized Admission Committee. That is why the petitioner filed the present petition on 16.9.2003.

4. However, after issuance of notice, the petition could not be heard because the controversy had continued to engage the attention of the learned Single Judge, then the Division Bench and then the Hon'ble Supreme Court and it is only recently that the Hon'ble Supreme Court has put an end to the controversy by order dated 15.12.2003. After giving certain clarifications in Islamic Academy of Education case explaining the judgment of the Apex Court in TMA Pai Foundation case, in the recent order dated 15.12.2003 in SLP (Civil) No. 18297 of 2003, the Hon'ble Supreme Court has observed that the 20% seats filled up pursuant to the Government order dated 9.5.2003 may not be disturbed if such students are otherwise qualified as per the standard prescribed by the Medical Council of India in medical colleges or any other such or similar body prescribing standard for admission in respect of other institutions. Since no entrance examination has been held in the State of Gujarat and the students are being admitted on the basis of the marks obtained in the 12th standard examination, and in view of the fact that the Apex Court had allowed the management to fill up the seats upto 50% of the seats including the 20% seats which are already filled up by the management, the Apex Court has directed that such admissions are not to be disturbed.

5. In view of the above directions of the Hon'ble Supreme Court, Mr Dipen Desai, learned AGP for respondent Nos. 1 and 2, under instructions from Mr Chhaya of Joint Admission Committee for professional courses, states that it is open to respondent No.3 to admit the petitioner to

the first year Homeopathy Course and the petitioner can continue to pursue her studies in the first year Homeopathy Course on a seat in the management quota.

6. In view of the above, the petition is allowed. All the respondents are directed to act in compliance with the aforesaid statement made by the learned Assistant Government Pleader.

Rule is made absolute to the aforesaid extent.

(M.S. Shah, J.)

sundar/-